



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC- 2021-06]

RIN 1104-AA11

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is amending its rules concerning cases designated as “Original Jurisdiction” to eliminate the designation, voting, appeal, and early termination of parole procedures. After these amendments, cases currently designated as “Original Jurisdiction” will have that designation removed and the voting procedures, appeals, and early termination process will proceed in the same manner as federal parole cases not previously designated as “Original Jurisdiction.”

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gregory Thornton, Assistant General Counsel, U.S. Parole Commission, 90 K Street, N.E., Third Floor, Washington, D.C. 20530, telephone (202) 346-7033. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Rule 28 CFR 2.17 governs “Original Jurisdiction” cases. In essence, 28 CFR 2.17 allowed a Regional Commissioner to refer high profile or complex cases to the Commission’s National Commissioners for a majority vote. The purpose of the rule was to ensure consistency in Commission decisions while also allowing the National Commissioners to set the Commission’s national policy. All Commissioners are now National Commissioners and there are no longer differences in decision making by region. Therefore, the utility of 28 CFR 2.17 no longer exists.

Likewise, rule 28 CFR 2.24(b)(1) explains the process for designating a case as “Original Jurisdiction.” Removing 28 CFR 2.17 makes this rule meaningless and it must be removed as well.

Similarly, rule 28 CFR 2.27 governs petitions for reconsideration of cases decided under the “Original Jurisdiction” procedures stated in 28 CFR 2.17. With the amendment to 28 CFR 2.17 which eliminates “Original Jurisdiction” cases after the publication of the final rule, there is no further purpose to 28 CFR 2.27. Federal parole eligible inmates and parolees will still have the ability to submit an administrative appeal pursuant to 28 CFR 2.26.

Additionally, rule 28 CFR 2.28(a) merely makes reference to “Original Jurisdiction” cases and this amendment removes the reference to “Original Jurisdiction” cases as that designation no longer exists.

Finally, rule 28 CFR 2.43 governs how the U.S. Parole Commission can terminate parole supervision before the date of the expiration of the criminal sentence. In particular, 28 CFR 2.43(f) explains that the voting procedure for terminating parole supervision early for a case designated as “Original Jurisdiction” must comply with the requirements of 28 CFR 2.17. With the removal of 28 CFR 2.17 which eliminates “Original Jurisdiction” cases after the publication of the final rule, there is no further purpose to 28 CFR 2.43(f) because no cases will remain designated as “Original Jurisdiction.” Similarly, 28 CFR 2.43(e) states the procedure for

appealing an adverse early termination decision and makes reference to the “Original Jurisdiction” appeal procedure as stated in 28 CFR 2.27. With the rule changes eliminating “Original Jurisdiction” designations and thus “Original Jurisdiction” voting and appellate procedures, modifying 28 CFR 2.43(e) and (f) to eliminate reference to “Original Jurisdiction” procedures is appropriate.

The amended rules will take effect upon publication in the Federal Register and will apply to the cases designated as “Original Jurisdiction” on the effective date.

Executive Orders 12866 and 13563

These regulations have been drafted and reviewed in accordance with Executive Order 12866, “Regulation Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation. The Commission has determined that these rules are not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly these rules have not been reviewed by the Office of Management and Budget.

Executive Order 13132

These rules will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

These rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

These rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

These rules are not considered “major rules” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). These rules will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2:

PART 2 - [AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.17 [Removed and Reserved]

2. Remove and reserve § 2.17.
3. Amend § 2.24 by revising paragraph (b) to read as follows:

§ 2.24 Review of panel recommendation by the Regional Commissioner.

* * * * *

(b) Upon review of the panel recommendation, the Regional Commissioner may also remand the case for a rehearing, with the notice of such action specifying the purpose of the rehearing.

§ 2.27 [Removed and Reserved]

4. Remove and reserve § 2.27.
5. Amend § 2.28 by revising paragraph (a) to read as follows:

§ 2.28 Reopening of cases.

(a) *Favorable information or information supporting medical parole or compassionate release.*

Upon the receipt of new information of substantial significance favorable to the prisoner, including medical information, or other extraordinary and compelling information, a Commissioner may reopen a case, and order a special reconsideration hearing on the next available docket, or modify the previous decision. The advancement of a presumptive release date or a decision to continue to a 15-year reconsideration hearing requires the concurrence of two Commissioners.

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6. Amend § 2.43 by:
 - a. Revising paragraph (e); and
 - b. Removing and reserving paragraph (f).

The revision reads as follows:

§ 2.43 Early termination.

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(e) A parolee may appeal an adverse decision under paragraph (c) of this section under § 2.26.

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Patricia K. Cushwa,
Chairman (Acting), U.S. Parole Commission.

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